IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2172 of 2007

SMT.JASWANT KANWAR
V/S
AMAR SINGH & ORS.

Mr. SANDEEP SARUPARIA, for the appellant / petitioner

Mr. NK RASTOGI, for the respondent

Date of Order : 10.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial court has dismissed the review petition filed by the petitioner, seeking to review the earlier order dt. 7.2.2007; whereby the petitioner's application for amendment of the issues has been rejected.

The petitioner had filed an application, contending interalia, that the issue no. 1 as framed has not been framed in accordance with the pleadings of the parties, inasmuch as the issue comprehends the question, as to whether the property in question is joint property between the plaintiffs, and the defendant no.2, and liable to be partitioned, while the pleading of the plaintiff is, that the defendant no. 1 has no right, title or interest in the property; but then, in that regard no issue has been

framed.

It is pleaded in para-4 of the plaint, that the defendant no.1 is the only daughter of Ugra Singh, but then Chatar Singh, Ugra Singh and Bhopal Singh having no male descendants, and defendant no. 1 does not have right, title or interest in the property, and therefore, it was suggested that issue no.1 should have been, to the effect, that the plaintiff and defendant no. 2 are entitled to have the property partitioned between themselves, on account of the defendant no.1 having no share, as Chatar Singh, Ugra Singh and Bhopal Singh had no male descendants.

The learned trial court dismissed the application on the ground, that at the time of framing the issue, objection was not raised.

Learned counsel for the respondent, on the other hand submits, that in the garb of amendment of the issue, the petitioner cannot be allowed to have her rights determined in the suit.

True it is, that the petitioner has not made any counter, claim but in my view, by amendment of the issue, the petitioner is not claiming establishment of any of her right, rather the issue is required to be re-cast on the basis of the pleadings, as contained in para-4 of the

plaint. It is in para-4, that the plaintiffs have pleaded as to how, do they have the right of partition in the property with the defendant no. 2, and how the respective parties have the shares in the property, and how the defendant no. 1 is excluded. In these circumstances, the issue suggested, was necessary to be framed, being arising from the pleadings of the plaint itself.

Accordingly though at admission stage, but in view of the short point involved, at the request of, and with the consent of the learned counsel for the parties, the writ petition itself has been finally heard, and therefore, it is allowed, and impugned orders Annexures 7 and 8 are set aside, and the issue no. 1 is re-cast as under:-

"कि आया वादपत्र की कलम सं. 1 में वर्णित पडोसी के मध्य स्थित हवेली व नोहरे में प्रतिवादी सं. 01 का हक हिस्सा साचतरसिंहजी उग्रसिंह व गोपालसिंहजी के कोई पुरूष संतान नही होने के कारण नही है। एवं प्रतिवादी सं. 01 का कोई हक हिस्सा सन्नही होने से वादी एवं प्रतिवादीगण सं.2 की शामलाती होने से विभाजन करवाने के अधिकारी है।"

Learned trial court is directed to decide the suit most expeditiously.

(N P GUPTA),J.

/sushil/